

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,  
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING, LLC, a  
Delaware limited liability company; GUY  
KOREN, an individual; POTATO  
CORNER LA GROUP, LLC, a California  
limited liability company; NKM  
CAPITAL GROUP, LLC, a California  
limited liability company; J & K  
AMERICANA, LLC, a California limited  
liability company; J&K LAKEWOOD,  
LLC, a California limited liability  
company; J&K VALLEY FAIR, LLC, a  
California limited liability company; J & K  
ONTARIO, LLC, a California limited  
liability company; HLK MILPITAS, LLC,  
a California, limited liability company; GK  
CERRITOS, LLC, a California, limited  
liability company; J&K PC TRUCKS,  
LLC, a California limited liability  
company; and, GK CAPITAL GROUP,  
LLC, a California limited liability  
company and DOES 1 through 100,  
inclusive,

Defendants.

PCJV USA, LLC, a Delaware limited

Case No. 2:24-CV-04546-SB(AGRx)

*The Hon. Stanley Blumenfeld, Jr.*

**[PROPOSED] UPDATED  
PRETRIAL CONFERENCE ORDER**

**Pre-trial Conference**

Date: January 9, 2026

Time: 8:30 a.m.

Place: 6C

**Trial**

Date: January 20, 2026

Time: 8:00 a.m.

Place: 6C

1 liability company; PCI TRADING LLC, a  
2 Delaware limited liability company;  
3 POTATO CORNER LA GROUP LLC, a  
4 California limited liability company; GK  
5 CAPITAL GROUP, LLC, a California  
6 limited liability company; NKM  
7 CAPITAL GROUP LLC, a California  
8 limited liability company; and GUY  
9 KOREN, an individual,

6 Counter-Claimants,

7 v.

8 SHAKEY'S PIZZA ASIA VENTURES,  
9 INC, a Philippines corporation,

10 Counter Defendant.

11 PCJV USA, LLC, a Delaware limited  
12 liability company; PCI TRADING LLC, a  
13 Delaware limited liability company;  
14 POTATO CORNER LA GROUP LLC, a  
15 California limited liability company; GK  
16 CAPITAL GROUP, LLC, a California  
17 limited liability company; NKM  
18 CAPITAL GROUP LLC, a California  
19 limited liability company; and GUY  
20 KOREN, an individual,

16 Third Party Plaintiffs,

17 v.

18 PC INTERNATIONAL PTE LTD., a  
19 Singapore business entity; SPAVI  
20 INTERNATIONAL USA, INC., a  
21 California corporation; CINCO  
22 CORPORATION, a Philippines  
23 corporation; and DOES 1 through 10,  
24 inclusive,

25 Third Party Defendants.

1 Subject to and following pretrial proceedings, pursuant to FRCP 16 and Local Rule  
2 16, **IT IS ORDERED:**

3 **1. The parties are:**

- 4 • Plaintiff and Counter Defendant SHAKEY’S PIZZA ASIA VENTURES,  
5 INC (“SPAVI”), a Philippines corporation;
- 6 • Defendant, Counterclaimant, and Third Party Plaintiff PCJV USA, LLC  
7 (“PCJV”), a Delaware limited liability company;
- 8 • Counterclaimant and Third Party Plaintiff GUY KOREN, an individual;
- 9 • Counterclaimant and Third Party Plaintiff POTATO CORNER LA  
10 GROUP, LLC, a California limited liability company;
- 11 • Defendant NKM CAPITAL GROUP, LLC (“NKM”), a California limited  
12 liability company;
- 13 • Defendant J&K AMERICANA, LLC, a California limited liability  
14 company;
- 15 • Defendant J&K LAKEWOOD, LLC, a California limited liability company;
- 16 • Defendant J&K VALLEY FAIR, LLC, a California limited liability  
17 company;
- 18 • Defendant J&K ONTARIO, LLC, a California limited liability company;
- 19 • Defendant HLK MILPITAS, LLC, a California, limited liability company;
- 20 • Defendant GK CERRITOS, LLC, a California, limited liability company;
- 21 • Defendant J&K PC TRUCKS, LLC, a California limited liability company;
- 22 • Defendant GK CAPITAL GROUP, LLC, California limited liability  
23 company;
- 24 • Third Party Defendant PC INTERNATIONAL PTE LTD., a Singapore  
25 business entity;
- 26 • Third Party Defendant SPAVI INTERNATIONAL USA, INC., a California  
27 corporation; and
- 28 • Third Party Defendant CINCO CORPORATION (“Cinco”), a Philippines

corporation.

For ease of reference and where appropriate, the Defendants, Counterclaimants, and Third Party Plaintiffs are collectively referred to as the “PCJV Parties” or “Defendants” while SPAVI as a counter defendant along with the other third party defendants are collectively referred to as “Third Party Defendants.”

**The pleadings that raise the issues are:**

- SPAVI’s First Amended Complaint. Dkt. 65.
- The Answer to First Amended Complaint and Counterclaim/Third Party Complaint. Dkt. 108.
- SPAVI’s Answer and Affirmative Defenses to the PCJV Parties’ Counterclaim/Third Party Complaint. Dkt. 129.
- Third Party Defendants’ Answer and Affirmative Defenses to the PCJV Parties’ Counterclaim/Third Party Complaint. Dkt. 156.

**2. Federal jurisdiction and venue:**

Federal jurisdiction and venue are invoked on the following grounds: this Court has subject matter jurisdiction in this matter pursuant to 28 U.S.C. Sections 1331 and 1338(a) (federal question; trademarks) as it arises under acts of Congress related to trademarks. The Court has ancillary jurisdiction over the California state law claims alleged herein pursuant to 28 U.S.C. Sections 1338(b) and 1367 because the facts giving rise to those claims arise from the same common nucleus of operative facts as the claims subject to subject matter jurisdiction. Venue is proper in this District pursuant to 28 U.S.C. Section 1391 because the PCJV Parties transact regular and established business within this District and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

**3. Trial Length**

Based on 33 hours of projected witness time, alongside voir dire, openings, closings, etc., the parties’ trial estimate is six-eight (6-8) days.

1       **4. Jury or Non-Jury Trial**

2       All parties seek a jury trial on all non-equitable issues.

3       SPAVI contends its unclean hands affirmative defense should also be tried to the  
4 jury, and the Court has discretion to allow a jury to decide this defense. *See Kendall-*  
5 *Jackson Winery, Ltd. v. Super. Ct.*, 76 Cal.App.4th 970, 985 (1999). SPAVI contends that  
6 the equitable issues to be tried to the Court on SPAVI's affirmative claims would be any  
7 damage enhancement and any determination of this case being exceptional.

8       Defendants object to the selective handling of equitable defenses, including the  
9 unclean hands defense, which both parties raise in this case, and request the Court's  
10 guidance whether all defenses, both parties' unclean hands defense or no equitable  
11 defenses will be tried to the jury on a binding or non-binding basis. Defendants contend  
12 that their claims for declaratory and injunctive relief are tried to the Court.

13       **5. The following facts are admitted and require no proof:**

14       Defendants contend that all stipulated facts previously agreed to at Dkt. 257 are  
15 facts that are admitted and require no proof.

16       SPAVI contends that only the following facts are admitted and require no proof:

- 17       • SPAVI is a publicly traded food services corporation headquartered in the  
18       Republic of the Philippines.
- 19       • In 1992, four individuals—Jose Magsaysay Jr. (also known as “JoMag”), Ricky  
20       Montelibano, Danny Bermejo, and George Wieneke, originally operating under  
21       Quattro Corporation and later under Cinco Corporation (“Cinco”)—established  
22       the Potato Corner brand in the Philippines.
- 23       • PCJV USA, LLC (“PCJV”) is a Delaware limited liability company operating  
24       in the United States.
- 25       • PCJV stands for “Potato Corner Joint Venture.” As a result of a 2024 settlement,  
26       PCJV is wholly owned by Guy Koren through his entities (Potato Corner LA  
27       Group, LLC and GK Capital Group, LLC).
- 28       • PCI Trading LLC (“PCIT”) is a Delaware limited liability company operating in

the United States.

- Similar to PCJV, as a result of a 2024 settlement, PCIT is now wholly owned by Guy Koren (individually and through GK Capital Group, LLC).
- Beginning in 2010, Cinco filed applications to register certain marks with the United States Patent and Trademark Office (“USPTO”).
- Those applications included an application to register a Potato Corner logo mark, a Potato Corner word mark, and a slogan mark.
- The USPTO issued registrations for the marks.
- Potato Corner LA Group, LLC is a California limited liability company owned by Guy Koren.
- GK Capital Group, LLC is a California limited liability company owned by Guy Koren.

**6. The following facts, though stipulated, shall be without prejudice to any evidentiary objections:**

None.

**7. Claims and Defenses**

**SPAVI and Third Party Defendants**

(a) SPAVI plans on pursuing the following claims and the Third Party Defendants plan on pursuing the following affirmative defenses:

- Claim 1: Defendants and each of them are liable for Trademark Infringement (15 U.S.C. § 1114);
- Claim 2: Defendants and each of them are liable for Common Law Trademark Infringement;
- Affirmative Defense 1: Justification;
- Affirmative Defense 2: Mitigation;
- Affirmative Defense 3: Unclean Hands.

(b) The elements required for SPAVI’s claims and Third Party Defendants’ affirmative defenses are:

- The elements required to establish SPAVI's federal and common law trademark infringement claims are the same except as specifically provided below:
  1. SPAVI owns valid, protectable trademarks;
  2. The PCJV Parties have used the same or similar trademarks in interstate commerce;
  3. The PCJV Parties used these trademarks without the consent of SPAVI in a manner that is likely to cause confusion among ordinary consumers as to source, sponsorship, affiliation, or approval of the goods;
  4. SPAVI has been damaged by the PCJV Parties' infringement in a calculable amount;
  5. The PCJV Parties' infringement was intentional, willful, and/or the product of malice, fraud, or oppression.
- The elements required to prove justification as an affirmative defense to an interference tort are:
  1. SPAVI and Third Party Defendants had a legitimate financial interest in the relation;
  2. SPAVI and Third Party Defendants acted only to protect their own financial interest;
  3. SPAVI and Third Party Defendants acted reasonably and in good faith to protect it; and
  4. SPAVI and Third Party Defendants used appropriate means to protect it.
- The elements required to prove mitigation are:
  1. The PCJV USA Parties failed to use reasonable efforts to mitigate damages; and
  2. The amount by which damages would have been mitigated.

- The elements required to prove unclean hands are:

1. That the PCJV Parties' conduct is inequitable, which requires only a showing of wrongfulness, willfulness, bad faith, or gross negligence. The misconduct does need not be a crime or an actionable tort. Any conduct that violates conscience or good faith or other equitable standards of conduct is sufficient cause to invoke the unclean hands doctrine.
2. That the PCJV Parties' inequitable conduct is related to the subject matter of the PCJV Parties' counterclaims and third party claims. Thus, what is material under this theory is not just that the PCJV Parties' hands are dirty, but that they dirtied their hands in acquiring the right they now assert in this action.

(c) In brief, the key evidence SPAVI and Third Party Defendants rely on for each of the claims is:

- Trademark Causes of Action.

- **Ownership of the Marks.** The Potato Corner brand as indicative of a fast-food establishment featuring flavored French fries dates to a single cart started in the Philippines in 1992. Cinco initially owned the brand and established or franchised outlets utilizing the trademark throughout Asia. In 2009, Cinco brought the fast-food concept to the United States by first licensing a Potato Corner outlet in San Francisco and then licensing outlets in Los Angeles County to Guy Koren. Cinco would go on to register the Potato Corner name and brand, along with ancillary taglines, with the USPTO. All authorized domestic use of the Potato Corner brand has been by license or sublicense as authorized by the trademark holder. In 2022, Cinco sold the assets of its Potato Corner business to SPAVI, which included the business's worldwide trademark registrations



1 and goodwill. Since then, SPAVI has operated or franchised Potato  
2 Corner outlets throughout the world.

- 3 ○ **The PCJV Parties' Use of the Potato Corner Marks.** In 2009,  
4 Cinco's then international licensing agent granted NKM a license  
5 to establish Potato Corner outlets in Los Angeles County. Shortly  
6 thereafter, Cinco with Guy Koren established PCJV for the purpose  
7 of acting as the master franchisor for Potato Corner franchises  
8 throughout the United States. Cinco's 60% membership interest in  
9 PCJV would be owned by non-party Potato Corner International  
10 Inc. ("PCI") and the remaining 40% would purportedly come to be  
11 owned by Potato Corner LA Group LLC<sup>1</sup>. PCJV agreed to license  
12 the Potato Corner Intellectual Property, which included the Potato  
13 Corner trademarks, from Cinco in exchange for a royalty payment.  
14 PCJV would then franchise Potato Corner outlets throughout the  
15 United States, which included a sublicensed right to use the Potato  
16 Corner trademarks subject to PCJV's licensed rights from Cinco.  
17 These sublicensees include the remaining defendants in this action,  
18 which are all entities that Guy Koren holds an ownership interest  
19 in. In 2022, after SPAVI acquired the Potato Corner business from  
20 Cinco, SPAVI attempted to negotiate a license agreement with  
21 PCJV for its continued use of the Potato Corner intellectual  
22 property. While SPAVI's acquisition of the Potato Corner business  
23 was subject to Cinco's existing contractual relationships, since  
24 PCJV had never paid any royalties to Cinco for its use of the Potato  
25 Corner intellectual property, PCJV was in breach of any license  
26 agreement. When PCJV refused to negotiate in good faith, SPAVI,

27  
28 <sup>1</sup> To be clear, Potato Corner LA Group, LLC is not a party to the Joint Venture Agreement (Trial Exhibit 8), the First Amendment to the Joint Venture Agreement (Trial Exhibit 1053), or the Limited Liability Operating Agreement (Trial Exhibits 62, 128).

1 in a May 31, 2024 letter, notified PCJV that any license it may have  
2 held with respect to the Potato Corner marks was terminated, which  
3 similarly terminated the sublicense rights held by any of the PCJV  
4 Parties.

5 ○ **The PCJV Parties' Use of the Potato Corner Marks without**  
6 **Consent.** After SPAVI terminated PCJV's license to use the Potato  
7 Corner intellectual property in May of 2024 due to PCJV's failure  
8 to negotiate in good faith towards a new license and for its failure  
9 to pay any royalties for its use, the PCJV Parties' continued use of  
10 the Potato Corner marks was without SPAVI's consent.  
11 Irrespective of this termination and despite the Court's preliminary  
12 injunction, some of the PCJV Parties continued to use the Potato  
13 Corner marks without SPAVI's consent.

14 ○ **Damages.** Since SPAVI's acquisition of the Potato Corner assets  
15 from Cinco, the PCJV Parties have earned more than \$45 million  
16 in the form of royalties from non-party sublicensees or from  
17 revenues from their own outlets operating as Potato Corner.  
18 SPAVI's damages can be calculated based on a reasonable royalty  
19 applied to this amount of at least 6%, which is consistent with the  
20 royalty rate PCJV charged sublicensees.

21 ○ **Bad Conduct.** While a subsidiary of Cinco was the 60% owner of  
22 PCJV, Guy Koren, during all relevant times, was the president of  
23 PCJV with extremely broad powers to control PCJV. Guy Koren  
24 caused PCJV to agree that the Potato Corner outlets he controlled  
25 were excepted from any royalty obligations to PCJV and Cinco.  
26 Similarly, Guy Koren caused PCJV to agree that PCJV itself would  
27 not pay any royalties to Cinco (and subsequently to SPAVI) for its  
28 use of the Potato Corner intellectual property. The conduct of the

1 PCJV parties as it relates to Cinco or derives from Cinco was  
2 released by Cinco pursuant to a March 2026 settlement agreement,  
3 whereby the Potato Corner LA Group acquired the 60% interest in  
4 PCJV indirectly held by Cinco. SPAVI, however, was not a party  
5 to that release and the PCJV Parties continued to intentionally and  
6 willfully refuse to pay any royalties for that use after SPAVI  
7 acquired the Potato Corner assets from Cinco. Not only did the  
8 PCJV Parties refuse to negotiate in good faith with SPAVI towards  
9 a new license for such use, but the PCJV Parties continued to use  
10 the marks after SPAVI terminated any possible licensed right they  
11 may have had. The PCJV Parties have continued to use the marks  
12 in willful disregard of this Court's preliminary injunction, and, as  
13 such, have acted with fraud, malice, and oppression.

14 2. Justification Affirmative Defense

- 15 ○ **Legitimate financial interest.** In or about 2018, after five brain  
16 surgeries starting since 2014, continuing seizures, and other highly  
17 serious medical conditions, Cinco's founder and CEO, Jose  
18 Magsaysay, decided he wanted to take a step back from running  
19 Potato Corner and sell the Potato Corner business, and his partners  
20 supported him. Cinco received its first offer to purchase the Potato  
21 Corner business in 2018 and three more thereafter, though  
22 ultimately none of them were the right fit. SPAVI, which operated  
23 a number of fast-food franchises in the Philippines and surrounding  
24 countries, was the fifth entity to make an offer to purchase the  
25 Potato Corner business in 2022, and Mr. Magsaysay knew that  
26 SPAVI would take care of the Potato Corner business. After some  
27 negotiations, SPAVI acquired the worldwide assets of the Potato  
28 Corner business, including its trademarks. SPAVI, however, did

1 not acquire any membership interests held by Cinco or any of its  
2 wholly owned subsidiaries, including any such membership interest  
3 in PCJV. SPAVI acquired the assets for the legitimate business  
4 purpose of continuing the operation and franchising of Potato  
5 Corner outlets throughout the world. SPAVI acquired these assets  
6 subject to any contractual or legal obligations already attached to  
7 them. SPAVI had a legitimate business interest in terminating any  
8 license held by PCJV for the use of the Potato Corner trademarks  
9 because PCJV had not paid any royalties for its use following  
10 SPAVI's acquisition of the Potato Corner business assets and  
11 because PCJV was unwilling to enter into a license agreement for  
12 its use that included a financially viable royalty rate for SPAVI.

- 13 ○ **SPAVI and Third Party Defendants acted only to protect their**  
14 **own financial interests.** Cinco sold the assets of its Potato Corner  
15 business due to its CEO's health concerns and resulting desires to  
16 take a step back from holding such a demanding job. SPAVI  
17 purchased the assets of the worldwide Potato Corner business  
18 because that business fit well with SPAVI's existing business plan  
19 and SPAVI had the assets and resources to weather the lockdowns.  
20 SPAVI had a legitimate business interest in terminating any license  
21 held by PCJV because PCJV had never paid SPAVI any royalties  
22 for PCJV's use of the Potato Corner intellectual property, including  
23 the Potato Corner trademarks, and had refused to negotiate a new  
24 license with SPAVI that included a financially viable royalty rate.  
25 While SPAVI terminated PCJV's license to use and sublicense the  
26 Potato Corner trademarks, SPAVI has continued to license the use  
27 of such marks for the operating of authorized Potato Corner outlets  
28 in the United States, including those outlets that had previously

1 sublicensed such rights from PCJV.

2 ○ **SPAVI and Third Party Defendants acted reasonably and in**  
3 **good faith to protect their interests.** Cinco's decision to sell the  
4 assets of its worldwide Potato Corner business was driven by its  
5 CEO's personal health concerns. SPAVI purchased the assets of the  
6 Potato Corner business because they fit well with SPAVI's existing  
7 portfolio of fast-food establishments and SPAVI had the financial  
8 resources to weather lockdowns. SPAVI acted reasonably in  
9 terminating any license held by PCJV because PCJV had never paid  
10 SPAVI any royalties for its use of the Potato Corner trademarks  
11 and, after a two-year effort, PCJV was unwilling to enter into a  
12 commercially reasonable licensing arrangement with SPAVI or  
13 provide any justification as to why it should receive special  
14 treatment. Following the termination of PCJV's license, SPAVI  
15 promptly reached out to PCJV's sublicensees to minimize any  
16 disruption of their business, and SPAVI has continued to operate  
17 and expand the Potato Corner business both domestically and  
18 worldwide.

19 ○ **SPAVI and Third Party Defendants used appropriate means to**  
20 **protect their interests.** When Cinco's CEO decided to sell the  
21 Potato Corner business due to his health concerns, multiple offers  
22 came from various entities to take over the Potato Corner business.  
23 However, none of them felt like the right fit until SPAVI came  
24 along in 2022, at which time SPAVI acquired the assets of Cinco's  
25 worldwide Potato Corner business. Thereafter, SPAVI took over  
26 Cinco's negotiations with PCJV for a license to the Potato Corner  
27 intellectual property. Despite PCJV's agreement to pay royalties  
28 for the use of the Potato Corner intellectual property, it had never

1 paid any such royalties to Cinco nor did it commence payment of  
2 any royalties to SPAVI following the acquisition. For nearly two  
3 years, SPAVI sought to engage PCJV in negotiations for a license  
4 of its continued use and sublicense of the Potato Corner intellectual  
5 property. SPAVI proposed a below market, commercially  
6 reasonable license to PCJV at the outset. PCJV would thereafter  
7 respond by proposing a significantly lower royalty rate that was not  
8 financially viable for a publicly traded company like SPAVI. This  
9 proposal also exempted PCJV-owned Potato Corner outlets (each  
10 of which Guy Koren holds a personal stake) from paying any  
11 royalty rates. PCJV never responded to SPAVI's repeated requests  
12 for documentation that would substantiate why such a low royalty  
13 rate was appropriate in this case. Following a nearly two-year effort  
14 during which PCJV made no royalty payment to SPAVI, SPAVI  
15 sent PCJV a termination notice expecting that it would prompt  
16 PCJV to reengage in license negotiations, but it did not. After  
17 sending the termination notice to PCJV, SPAVI followed up with  
18 PCJV's sublicensees to offer them commercially reasonable  
19 royalty rates to continue to use the Potato Corner intellectual  
20 property. SPAVI filed suit to protect its interest in the Potato  
21 Corner trademarks and sought and obtained from the Court a  
22 preliminary injunction in which the Court decided that SPAVI was  
23 likely to prevail on its claims of ownership to the Potato Corner  
24 trademarks and that PCJV, as well as the outlets controlled by Guy  
25 Koren, were infringing those marks by their continued use  
26 following SPAVI's termination of any licensed rights to them.

### 27 3. Mitigation

- 28 ○ **The PCJV Parties failed to use reasonable effort to mitigate**

1           **damages.** The damage expert for the PCJV Parties does not  
2 include any analysis of the value of the Potato Corner brand to the  
3 revenues earned by the PCJV Parties or the fact that the PCJV  
4 Parties have rebranded their outlets away from Potato Corner and  
5 continue to operate and earn revenues. The damage expert for the  
6 PCJV Parties suggests that PCJV would have been able to license  
7 additional franchisees for the Potato Corner brand but include no  
8 analysis as to whether PCJV could simply establish a new franchise  
9 business under his new brand.

- 10           ○ **The amount by which damages would have been mitigated.**  
11 PCJV was never successful in achieving any meaningful positive  
12 brand identification for Potato Corner outlets as reflected by the  
13 stagnant growth in outlets over time, with many outlets closing after  
14 operating for only a few years as well as the anemic interest by  
15 others in opening new Potato Corner outlets. As such, there is no  
16 reason to believe that the PCJV Parties would earn any greater  
17 revenues had their outlets remained branded as Potato Corner rather  
18 than as they are currently branded. Thus, the PCJV Parties fail to  
19 show any amount of damages that would not otherwise be mitigated  
20 by the continued operations of outlets under a different brand.

21           **4. Unclean Hands**

- 22           ○ **The PCJV Parties' Conduct was inequitable.** SPAVI relied upon  
23 the PCJV Parties, and in particular Guy Koren, to operate the  
24 franchise business in the best interest of its members and to honor  
25 the rights of Cinco as the owner of the Potato Corner intellectual  
26 property. Instead, Guy Koren used his role at PCJV to simply  
27 enrich himself. He refused to honor PCJV's royalty obligation by  
28 falsely informing both auditors overseeing franchise boards as well



1 as potential franchisees that PCJV's obligation to make royalty  
2 payments had been waived by the members when no such waiver  
3 ever occurred on an annual basis as PCJV, through Koren, told  
4 others. Guy Koren then signed, both on behalf of PCJV as well as  
5 his entity, a separate service agreement paying him hundreds of  
6 thousands of dollars per year of purported management fees while  
7 informing Cinco that it lacked the funds to pay royalties. Guy  
8 Koren also caused each of the outlets that he controlled to be  
9 exempt from any royalty obligations by signing documents  
10 amending their franchise agreements with PCJV to permit such  
11 exceptions. After SPAVI acquired the assets of the Potato Corner  
12 business, Guy Koren refused to negotiate in good faith for a license  
13 to permit PCJV to continue to use and sublicense the PCJV  
14 intellectual property. During the entire time he delayed the  
15 negotiations with SPAVI, Guy Koren caused PCJV not to pay any  
16 royalties to SPAVI for the continued use of the intellectual  
17 property. In response to SPAVI's below market offer of a license  
18 arrangement for PCJV, PCJV responded, through Guy Koren, that  
19 PCJV could not afford even that reduced rate and proposed in  
20 response a commercially unreasonable rate. PCJV, again through  
21 Guy Koren, refused to substantiate this contention that PCJV was  
22 unable to pay any reasonable royalty rate for its continued use of  
23 the Potato Corner intellectual property. During the entire time  
24 PCJV continued to utilize the Potato Corner intellectual property  
25 after it had been acquired by SPAVI, Guy Koren continued to cause  
26 both PCJV and the outlets he controlled to divert money for his  
27 personal benefit in an effort to show that PCJV and the outlets Guy  
28 Koren controlled were unable to make reasonable royalty payments



1 to SPAVI. After receiving a termination notice from SPAVI, Guy  
2 Koren caused PCJV to continue to improperly utilize the Potato  
3 Corner intellectual property and improperly threatened franchisees  
4 to dissuade them from entering into agreements with SPAVI for the  
5 continued use of the Potato Corner intellectual property even  
6 though PCJV was in breach of the franchise arrangement with these  
7 franchisees because PCJV could no longer provide them the right  
8 to use the Potato Corner intellectual property. The PCJV Parties'  
9 inequitable conduct continued by its continued use of the Potato  
10 Corner intellectual property even after this Court issued a  
11 preliminary injunction barring such continued use and held the  
12 PCJV Parties in contempt for that continued use.

- 13 ○ **The PCJV Parties' inequitable conduct relates to the subject**  
14 **matter of SPAVI's and the PCJV Parties' claims.** SPAVI  
15 terminated PCJV's license to use the Potato Corner intellectual  
16 property because Guy Koren refused to negotiate with SPAVI in  
17 good faith and because PCJV had never paid any royalties to  
18 SPAVI or Cinco for its use of that intellectual property or the use  
19 by the outlets controlled by Guy Koren. The PCJV Parties bring a  
20 variety of causes of action against the Third Party Defendants  
21 arising from Cinco's sale of the assets of its Potato Corner business  
22 to SPAVI claiming that conduct was inconsistent with the joint  
23 venture obligations of Cinco and its subsidiary that were owed to  
24 PCJV and its members. The PCJV Parties, however, never honored  
25 their obligation to either Cinco, its subsidiary, or SPAVI. Instead,  
26 Guy Koren caused PCJV to not pay any royalties to Cinco or  
27 SPAVI and caused PCJV to divert money belonging to the  
28 members to Guy Koren as well as causing the outlets he controlled

to divert money due PCJV to his personal benefit.

**Defendants, Counter Claimants, and Third Party Plaintiffs**

(A) Based on the Court's summary judgment ruling and order as to Plaintiff's burden to prove ownership as an assignee under the Ninth Circuit's jury instruction 15.15, either PCJV as the sole counterclaimant (once the parties formalize that agreement) or PCJV alongside Guy Koren and Potato Corner LA Group, LLC plan to pursue the following counterclaims/third party claims and the remaining Defendants to this action plan to pursue the following affirmative defenses:

- Claims against SPAVI
  - a. Intentional Interference with Contractual Relations
  - b. Inducing Breach of Contract
  - c. Intentional Interference with Prospective Economic Relations
  - d. Negligent Interference with Prospective Economic Relations
  - e. Aiding and Abetting Breach of Fiduciary Duty
- Claims against Cinco
  - a. Breach of Fiduciary Duty
  - b. Breach of Contract
  - c. Breach of the Implied Covenant of Good Faith and Fair Dealing
- Claims tried to the Court (as narrowed)
  - a. Declaratory Relief
  - b. Violations of Business & Professions Code §§ 17200, *et seq.*
- Affirmative Defenses
  - a. Abandonment by Naked License
  - b. Waiver
  - c. Acquiescence
  - d. Ratification
  - e. Promissory Estoppel
  - f. Equitable Estoppel

g. Judicial Estoppel

h. Unclean Hands

i. *In pari delicto*

j. Mitigation

(a) The elements required to establish the PCJV Parties' counterclaims/third party claims and Defendants' affirmative defenses:

- The PCJV USA Parties' Counterclaims/Third Party Claims

- Intentional Interference with Contractual Relations – (1) that PCJV (inclusive of Koren and LA Group) had contracts with the Cinco parties, including Cinco, as well as with U.S. franchisees; (2) that SPAVI knew of the contracts; (3) that SPAVI's conduct prevented performance or made performance more expensive or difficult; (4) that SPAVI either intended to disrupt the performance of these contracts or knew that disruption of performance was certain or substantially certain to occur; (5) that PCJV was harmed; and (6) that SPAVI's conduct was a substantial factor in causing PCJV's harm.

- Inducing Breach of Contract – (1) that PCJV (inclusive of Koren and LA Group) had contracts with the Cinco parties, including Cinco, as well as with U.S. franchisees; (2) that SPAVI knew of the contracts; (3) that SPAVI intended to cause any one of the Cinco parties or U.S. franchisees to breach contractual obligations; (4) that SPAVI's conduct caused a breach the contract with the PCJV Parties; (5) that PCKV was harmed; and (6) that SPAVI's conduct was a substantial factor in causing the harm.

- Interference with Prospective Economic Relations – (1) that PCJV had economic relations with the Cinco parties and U.S. franchisees that probably would have resulted in a future economic benefit to

1                   them; (2) that SPAVI knew of the relationships; (3) that SPAVI  
2                   engaged in independently wrongful conduct to destroy the value of  
3                   any one of the relationships by usurping the benefits of those  
4                   relationships for SPAVI's benefit using improper means and  
5                   methods; (4) that by engaging in this conduct, SPAVI either  
6                   intended to disrupt the relationships or knew that disruption of the  
7                   relationships was certain or substantially certain to occur; (5) that  
8                   those relationships were disrupted; (6) that PCJV was harmed; and  
9                   (7) that SPAVI's conduct was a substantial factor in causing  
10                  PCJV's harm.

11               ○ Negligent Interference with Prospective Economic Relations – (1)  
12                  that PCJV had economic relations with any of the Cinco parties and  
13                  U.S. franchisees that probably would have resulted in a future  
14                  economic benefit to PCJV; (2) that SPAVI knew or should have  
15                  known of these relationships; (3) that SPAVI knew or should have  
16                  known that these relationships would be disrupted if it failed to act  
17                  with reasonable care; (4) that SPAVI failed to act with reasonable  
18                  care; (5) that SPAVI engaged in independently wrongful conduct  
19                  to destroy the value of PCJV's relationships by usurping the  
20                  benefits of those relationships for SPAVI's benefit using improper  
21                  means and methods; (6) that the relationship was disrupted; (7) that  
22                  PCJV was harmed; and (8) that SPAVI's wrongful conduct was a  
23                  substantial factor in causing PCJV's harm.

24               ○ Aiding and Abetting Breach of Fiduciary Duty – (1) that Cinco  
25                  breached a fiduciary duty; (2) SPAVI knew that a breach of a  
26                  fiduciary duty would be committed by Cinco against PCJV  
27                  (inclusive of Koren and LA Group); (2) that SPAVI gave  
28                  substantial assistance or encouragement to Cinco; and (3) that

SPAVI's conduct was a substantial factor in causing harm to PCJV.

- Breach of Fiduciary Duty – (1) that Cinco was a joint venture partner of or member in PCJV; (2) that Cinco failed to act as a reasonably careful partner or member would have acted under the same or similar circumstances such that it breached its duty of care, or knowingly acted against PCJV's interests without PCJV's informed consent such that it breached its duty of loyalty; and (3) that Cinco's conduct was a substantial factor in causing harm.
- Breach of Contract – (1) that PCJV (inclusive of Koren and LA Group) and Cinco entered into a contract; (2) that PCJV did all, or substantially all, of the significant things that the contract required it to do if not excused; (3) that Cinco failed to do something that the contract required it to do; (4) that PCJV was harmed; and (5) that Cinco's breach was a substantial factor in causing PCJV's harm.
- Breach of Implied Covenant of Good Faith and Fair Dealing – (1) that PCJV (inclusive of Koren and LA Group) and Cinco entered into a contract; (2) that PCJV did all, or substantially all of the significant things that the contract required them to do if not excused; (3) that Cinco, by its conduct, acted unfairly or in bad faith so as to deprive PCJV of the benefits of the contract; and (4) that PCJV was harmed by Cinco's conduct.
- Declaratory Relief – if the jury finds that SPAVI is not a valid assignee or that Cinco or SPAVI did not exercise adequate quality control over Potato Corner USA's catering or restaurant services, then PCJV seeks a declaration and injunctive relief against all Counter Defendants and Third Party Defendants that PCJV is the true owner and senior user of the Potato Corner USA marks entitled

1 to ancillary injunctive relief, so as to avoid a likelihood of  
2 confusion; and

- 3 ○ Violations of Business & Professions Code §§ 17200, et seq. – if  
4 the jury finds that SPAVI was not a valid assignee or that Cinco or  
5 SPAVI did not exercise adequate quality control over Potato  
6 Corner USA’s catering or restaurant services, then PCJV seeks a  
7 judgment that Counter Defendants and Third Party Defendants  
8 engaged in unfair competition and thus should be enjoined from  
9 interfering with PCJV’s rights.

10 • Defendants’ Affirmative Defenses

- 11 ○ Abandonment by Naked License – that Cinco and/or SPAVI failed  
12 to exercise adequate quality control over PCJV’s use of the Potato  
13 Corner marks to promote PCJV’s restaurant and catering services.  
14 Alternatively, SPAVI inherited Cinco’s naked license as a  
15 limitation of any trademark rights SPAVI acquired from Cinco and  
16 cannot assert greater rights than acquired from Cinco.
- 17 ○ Waiver – that (1) Cinco or SPAVI knew of the right to a written  
18 license and payment of royalties as specified in the AJVA; and (2)  
19 Cinco or SPAVI freely and knowingly gave up that right, or by  
20 words or conduct intentionally acted inconsistently with an intent  
21 to enforce the right. Alternatively, (3) SPAVI inherited Cinco’s  
22 waiver of the right to a written license and royalties as specified in  
23 the AJVA as a limitation of any trademark rights SPAVI acquired  
24 from Cinco and cannot assert greater rights than acquired from  
25 Cinco, nor assert rights SPAVI did not acquire under the AJVA.
- 26 ○ Acquiescence – that Cinco or SPAVI actively conveyed through  
27 affirmative words or deeds its consent to PCJV’s ongoing long-  
28 term use of the Potato Corner marks in accordance with the parties’

1 course of dealing, and Defendants relied on the consent and would  
2 be substantially prejudiced if long-term rights were withdrawn.  
3 Alternatively, SPAVI inherited Cinco's acquiescence as a  
4 limitation on any trademark rights acquired from Cinco and cannot  
5 assert greater rights than acquired from Cinco, nor assert rights  
6 SPAVI did not acquire under the AJVA.

7 ○ Ratification – that (1) the parties' prior agreements superseded by  
8 the AJVA's integration clause were subsequently ratified and  
9 approved as operative agreements per their course of dealing; and  
10 (2) SPAVI inherited Cinco's ratification of prior agreements as a  
11 limitation on any trademark rights it acquired from Cinco and  
12 cannot assert greater rights than acquired from Cinco.

13 ○ Promissory Estoppel – that (1) Cinco promised the PCJV Parties  
14 may exclusively use the "Potato Corner" marks in the U.S., (2) the  
15 PCJV Parties relied on Cinco's promise, and (3) the PCJV Parties  
16 were injured from Cinco's promise.

17 ○ Judicial Estoppel – that (1) SPAVI took a prior position in this case  
18 disavowing a license agreement—claiming there was only an  
19 "agreement to agree" to a license, which, "at best" constitutes an  
20 "at-will" license; (2) SPAVI now takes the opposite position  
21 affirming that it inherited a license agreement—not a duty to enter  
22 into or to negotiate a license agreement, which it alleged in its  
23 complaint it attempted to do to no avail; (3) the Court took Cinco's  
24 initial position as true and granted SPAVI as preliminary  
25 injunction; (4) the positions are inconsistent; and (5) the first  
26 position was not taken as a result of ignorance, fraud, or mistake.

27 ○ Laches – that, if SPAVI is not judicially estopped from asserting  
28 and did not repudiate and waive a term license with 30/30 royalty



1 sharing obligations as specified in the AJVA, then it (1)  
2 unreasonably delayed raising such a claim, and (2) the PCJV Parties  
3 have been prejudiced by SPAVI's delay.

- 4 ○ Unclean Hands – that (1) SPAVI engaged in inequitable conduct or  
5 inherited inequitable conduct by Cinco as Cinco's assignee  
6 sufficient to invoke the doctrine of unclean hands; and (2) SPAVI's  
7 or Cinco's inequitable conduct is sufficiently related to the subject  
8 matter of SPAVI's claims so as to bar relief.
- 9 ○ In Pari Delicto – that (1) SPAVI and Defendants have substantially  
10 equal economic strength, (2) SPAVI is at least equally responsible  
11 for the harmful conduct as Defendants, and (3) SPAVI was not held  
12 by economic pressure to engage in the harmful conduct.
- 13 ○ Mitigation – that (1) SPAVI failed to use reasonable efforts to  
14 mitigate damages and (2) the amount by which damages would  
15 have been mitigated.

16 (b) In brief, the key evidence the PCJV USA Parties rely on for each  
17 counterclaim, third party claim and affirmative defense is:

18 • Claims against SPAVI

19 a. Intentional Interference with Contractual Relations

- 20 ○ The PCJV USA Parties' contractual relations with the Cinco  
21 Group, including Cinco, under the AJVA, including any  
22 agreements flowing therefrom, and contractual relations with U.S.  
23 franchises in reliance on the AJVA and any related agreements;
- 24 ○ Cinco and SPAVI's coordinated scheme to undermine the Potato  
25 Corner USA joint venture and to seize control of the Potato Corner-  
26 branded U.S. businesses, while repudiating, *inter alia*, contractual  
27 and fiduciary obligations owed to PCJV under the AJVA and  
28 disrupting contractual obligations U.S. franchisees owed to PCJV.



1 The scheme included secret negotiations, a structured asset deal,  
2 and a communications campaign premised on misleading  
3 statements and omissions about rights to the Potato Corner marks,  
4 the existence and terms of the parties' agreed license framework,  
5 the governance and consent regime under the AJVA, and U.S.  
6 franchisee obligations. The scheme involved fraudulent, deceitful,  
7 and unfair conduct in connection with negotiations, including in  
8 connection with a tolling and a settlement agreement with a  
9 fiduciary of PCJV; and

- 10 ○ The damages the PCJV USA Parties suffered as a result of  
11 Plaintiff's intentional interference, including leading to the  
12 announcement of its deal with Cinco in December 2021, and how  
13 that was a substantial factor in PCJV's inability to thrive, prosper  
14 and grow.

15 b. Inducing Breach of Contract

- 16 ○ Cinco and other counterparties, including U.S. franchisees, owed  
17 contractual obligations to PCJV, including duties under the AJVA  
18 to comply with consent/no-assignment provisions, to cooperate in  
19 and enter a license (if one did not already exist) with the agreed  
20 economic/term structure, to act in good faith in completing the  
21 license documentation and ongoing performance, and to rebrand as  
22 required under U.S. franchisee agreements;
- 23 ○ SPAVI knew of these obligations and intentionally induced Cinco  
24 and other counterparties to breach by offering and consummating a  
25 transaction structured to evade the AJVA's restrictions; by  
26 encouraging repudiation of joint venture governance and the  
27 license framework; and by directing communications to  
28 counterparties calculated to cause nonperformance or termination;

- The breaches occurred and were a substantial factor in causing PCJV's damages, including the decline of Potato Corner USA compared to Potato Corner USA's historic track record.

c. Tortious Interference with Prospective Economic Advantage

- PCJV USA Parties' claims for intentional and negligence interference with prospective economic advantage against SPAVI are based on the same contractual relationships and evidence as the PCJV USA Parties' claims for interference with contractual relations and inducing breach of contract, but also include prospective franchisees.
- One key evidentiary difference is that these claims apply if any of the contracts underlying PCJV USA Parties' contractual relations with any of the Cinco parties or U.S. franchisees is deemed terminable "at-will" for any reason; even in such case, the contractual relationships afforded probable economic advantages to PCJV USA Parties but for SPAVI's tortious interference, including wrongful conduct independent from the interference itself;

d. Aiding and Abetting Breach of Fiduciary Duty

- Cinco owed fiduciary duties of loyalty, care, and good faith to PCJV as joint venture partner and/or majority participant under the AJVA and the parties' course of dealing;
- Cinco breached those duties by secretly negotiating with SPAVI to transfer control and rights in derogation of the AJVA; by repudiating joint venture governance and consent/no-assignment provisions; by suppressing the agreed license framework; and by acting in self-interest rather than in furtherance of the PCJV;
- SPAVI knew of Cinco's fiduciary status and of the facts constituting breach, and gave substantial assistance and

encouragement to Cinco's breaches by structuring and consummating the asset deal; coordinating termination and transition messaging; and exploiting the breaches to displace PCJV;

- SPAVI's assistance was a substantial factor in causing PCJV's damages, as already described above;

- Claims against Cinco

- a. Breach of Fiduciary Duty

- Cinco owed fiduciary duties of loyalty, care, and good faith to PCJV as joint venture partner and/or majority participant under the AJVA and the parties' course of performance;
    - Cinco breached those duties by repudiating and denying its joint venture role; acting contrary to the AJVA's consent/no-assignment and governance provisions; failing to obtain a novation; refusing to cooperate in and enter a license with the agreed terms; suppressing and/or denying the license framework and AJVA restrictions; and conspiring with SPAVI to toll and settle, while SPAVI intended to "terminate" PCJV's rights and sue in bad faith to displace PCJV;
    - As a direct and proximate result, PCJV suffered damages, and is entitled to equitable relief including disgorgement.

- b. Breach of Contract/Implied Covenant of Good Faith and Fair Dealing

- The AJVA is a valid and enforceable contract governing the parties' rights and PCJV performed, or was excused from performing, all conditions precedent;
    - Cinco (either directly or as an alter ego) breached by violating the consent/no-assignment and governance provisions; by failing or refusing to enter a written license embodying the parties' agreed framework; by failing to exercise best efforts and good faith to complete the license documentation; and by repudiating contractual

obligations and agreements, including the AJVA's structure and restrictions and implied covenant not to do anything to unfairly interfere with PCJV's right to receive the benefits of the AJVA and the agreed license framework;

○ PCJV suffered resulting damages as already discussed.

• **Affirmative Defenses**

- a. Abandonment by Naked License: Both PCJV's first lawful use of the U.S. Potato Corner marks under 15 U.S.C. § 1055 and PCJV's sole continuous use under the AJVA and the parties' course of dealing thereunder was under PCJV's control.
- b. Waiver: At all relevant times Cinco and SPAVI, as Cinco's successor-in-interest, knew of Cinco's agreement not to pay 30/30 royalties but to reinvest into PCJV, and both repudiated Cinco's obligation under the AJVA to enter into a written license agreement with PCJV under the terms specified in the AJVA, and waived any right to a written license or royalty payments thereunder.
- c. Acquiescence: Cinco or SPAVI, as Cinco's successor-in-interest, actively conveyed their consent to PCJV's ongoing long-term use of the Potato Corner marks in accordance with the parties' course of dealing, and PCJV USA Parties relied on the consent and would be substantially prejudiced if long-term rights were withdrawn.
- d. Ratification: Over the parties' course of dealing after entering into the AJVA, Cinco expressly or impliedly ratified PCJV's LLC agreement, master services agreement, and long-term trademark rights under the AJVA, including the right to enter into long-term U.S. franchisee agreements, right to continue operating PCJV per their agreements, which involved paying upcharges on seasonings and reinvesting in PCJV, and right to a written license under the agreed-upon royalty

1 structure if Cinco wanted to change their operating agreements/course  
2 of dealing.

3 e. Promissory Estoppel: Cinco promised the PCJV Parties (1) long-term  
4 rights to use, license and franchise Potato Corner in the United States  
5 and (2) PCJV's President would control those rights; the PCJV Parties  
6 relied on Cinco's promise to create, develop and grow Potato Corner  
7 USA and would be substantially and unfairly prejudiced if Cinco's  
8 promise inherited by SPAVI was not enforced.

9 f. Judicial Estoppel: SPAVI took the position in its complaint and in  
10 moving for a preliminary injunction that the AJVA was merely an  
11 "agreement to agree" to a license agreement, that there was no license  
12 agreement, that it tried to negotiate a license agreement in good faith  
13 with Koren to no avail, and that PCJV Parties had "at best" an "at-will"  
14 license to use the Potato Corner marks, which SPAVI terminated on  
15 May 31, 2024; SPAVI has also argued that the PCJV Parties falsely  
16 informed U.S. franchisees that it had a term license for 20 years plus  
17 three 10 year options, and that it properly informed U.S. franchisees of  
18 the PCJV Parties' false representation; (2) the Court accepted SPAVI's  
19 factual position as true and granted SPAVI a preliminary injunction;  
20 (3) to Defendants' prejudice after having commenced a lawsuit and  
21 obtained an injunction under the asserted "agreement to agree"/"at  
22 best" an "at-will" license premise, SPAVI on the eve of trial has taken  
23 the position that PCJV Parties did not falsely represent that the parties  
24 had a term license agreement, that SPAVI supposedly honored and  
25 accepted the term license as Cinco's assignee, and that the license was  
26 not terminable "at-will"; (4) the positions are inconsistent; and (5) the  
27 first position was not taken as a result of ignorance, fraud, or mistake.

28 g. Laches: If SPAVI is not judicially estopped from asserting and did not

1 repudiate or waive a term license with 30/30 royalty sharing  
2 obligations as specified in the AJVA, then it (1) unreasonably delayed  
3 raising such a claim, and (2) the PCJV USA Parties have been  
4 prejudiced by SPAVI's delay.

5 h. Unclean Hands – SPAVI coordinated a scheme with Cinco to  
6 undermine the Potato Corner USA joint venture and to seize control of  
7 the Potato Corner-branded U.S. businesses, while repudiating  
8 contractual and fiduciary obligations owed to PCJV, which scheme  
9 included secret negotiations, a structured asset deal, and a  
10 communications campaign premised on misleading statements and  
11 omissions about rights to the Potato Corner marks, the existence and  
12 terms of the parties' agreed license framework, and the governance  
13 and consent regime under the AJVA, constitutes inequitable conduct  
14 directly tied to SPAVI's alleged acquisition of superior trademark  
15 rights in the United States.

16 i. In Pari Delicto – SPAVI at least had substantially equal economic  
17 strength as Defendants from March 2022 to present, and is at least  
18 equally responsible for any harmful conduct causing it harm or any  
19 lost profits from or due to Potato Corner USA, and SPAVI was not  
20 under any economic pressure to engage in the harmful conduct.

21 j. Mitigation – SPAVI failed to use reasonable efforts to mitigate  
22 damages given its substantial delay in asserting trademark rights  
23 against PCJV, including any royalty obligation, as well as in creating  
24 a competing Potato Corner USA franchise; indeed, 100% of its loss  
25 could have been avoided through reasonable, honest dealings.

26 • Common Factual Materials

27 a. Testimony regarding how PCJV's LA Group, including Guy Koren  
28 and PCJV itself, created Potato Corner USA's kiosk-style/in-line

- 1 quick-service restaurants and developed the goodwill in the U.S. brand  
2 and connected to PCJV's catering and restaurant services;
- 3 b. Guy Koren/Jose Magsaysay's communications regarding, *inter alia*,  
4 the creation of the PCJV joint venture partnership and limited liability  
5 company and agreement granting PCJV long-term trademarks rights  
6 and vesting of control in PCJV's President over the use, licensing and  
7 franchising of Potato Corner in the United States and Isreal;
- 8 c. The AJVA and subsequent ratification of PCJV's other governing  
9 documents as set forth in the settlement agreement between the PCJV  
10 USA Parties and Cinco parties;
- 11 d. The license agreements referenced in the record, including in the  
12 complaint, billing records and notary page, and denied by SPAVI as  
13 being valid and enforceable;
- 14 e. PCJV's FDDs and Board Minutes;
- 15 f. Cinco's verified pleadings in the state court action and SPAVI's  
16 pleadings here;
- 17 g. The tolling agreement, settlement agreement, membership interest  
18 purchase agreement, corresponding assignments and parol evidence  
19 that resulted in Koren's consolidation of interests of PCJV, Cinco's  
20 dismissal with prejudice of asserted claims and release of all known  
21 and unknown claims against Koren Parties with no carve out for any  
22 claims for damages, preserving only a claim for declaratory relief as to  
23 SPAVI's acquisition of international trademark rights, and purchase of  
24 all of Cinco's interests in PCJV and all of Cinco's licensing rights  
25 "attached" thereto, unencumbered by any claim by any third-party  
26 with respect thereto, along with representations and warranties that  
27 PCJV did not need any license from any third party to operate its U.S.  
28 Potato Corner USA franchise business;



- h. PCJV's governing documents and testimonial evidence regarding the consideration paid to Cinco thereunder, the absence of any claim against PCJV for breach of contract for allegedly failing to pay royalties, and Cinco's release of all known and unknown claims regarding any alleged failure to pay royalties;
- i. Testimonial evidence that there is no privity of contract between SPAVI and PCJV;
- j. PCJV's governing documents and testimonial evidence regarding Koren's First Amendment right to stand on his good faith belief regarding PCJV's trademark rights upon the agreed upon regime, whether owned by PCJV or inherited by SPAVI;
- k. SPAVI's March 31, 2024 alleged termination of IP rights, including as stated in writing and pled in SPAVI's complaint;
- l. SPAVI's decision to continue to sell, and offer to sell, at a profit flavored seasoning package to PCJV until September 2024;
- m. Evidence of damages, and expert report, opinion, testimony.

## **8. Issues Remaining**

In view of the admitted facts and the elements required to establish the claims, counterclaims, and affirmative defenses, the following issues remain to be tried:

SPAVI Parties identify the following issues remaining for trial:

### **Trademark Infringement Both Registered and at Common Law**

- SPAVI's ownership of the marks;
- Whether Cinco or SPAVI abandoned the marks;
- Defendants' infringement of the marks by failing to pay royalties and continuing to use the marks following SPAVI's termination of any license that may have been held by PCJV or any affiliate;
- The harm suffered by SPAVI from Defendants' infringing use;



- Whether Defendants', or any one of them, infringement was intentional, willful, or in bad faith;
- Whether an enhancement of damages is appropriate;
- Whether PCJV, or any of its agents or affiliates, acted with fraud, malice, or oppression;
- The amount of any punitive damages that should be awarded to SPAVI;
- Whether Defendants should be permanently enjoined from using the Asserted Trademarks and anything confusingly similar; and
- Whether this is an exceptional case warranting an award of attorney's fees and, if so, the amount of those attorney's fees.

#### **Unclean Hands**

- Whether Counterclaimants, their agents, or any one of them engaged in conduct that was wrongful, willful, in bad faith, or grossly negligent; and
- Whether such inequitable conduct is related to the subject matter of Counterclaimants' claims.

#### **Counterclaims**

- Whether Counterclaimants' claim for interference with contractual relations or inducing breach of contract should be limited to the contracts entered into with Cinco or its affiliates because that is all that Counterclaimants pled in their Counterclaim?
- Whether SPAVI's alleged inducement of a breach of contract was privileged or protected as justified?
- Whether PCJV has specifically identified a unique prospective relationship that has been interfered with?

Defendants identify the following alternative or additional remaining issues:

#### **Trademark Ownership**

1. Whether Plaintiff is the owner of—by a valid assignment including transfer of goodwill of the business or businesses connected with—the U.S. marks, especially

1 where, as here, Plaintiff claimed it did not inherit a control agreement and Plaintiff  
2 concedes that Defendants are not its “related companies” and further concedes that  
3 Plaintiff did not acquire from any of the Defendants or even the registrant (Cinco) any  
4 interest including the right to control the use of the marks in the U.S., and as of and  
5 subsequent to the alleged assignments (including before the alleged assignments), neither  
6 SPAVI nor the registrant controlled the use of the marks?

7 2. Whether Cinco or SPAVI abandoned the right to enforce the trademarks  
8 against the PCJV Parties by failing to exercise quality to control over PCJV’s restaurant  
9 and catering services, including whether SPAVI inherited a naked license?

10 3. Whether PCJV has a superior claim to ownership as the first lawful and  
11 continuous user of the trademarks if SPAVI is barred from enforcement by some other  
12 defense to its efforts to start a competing Potato Corner business in the United States?

13 **Trademark Use Without Consent**

14 4. Whether PCJV Parties’ use of the marks after May 31, 2024 was with  
15 consent, including as inherited by SPAVI?

16 5. Whether, prior to May 31, 2024, SPAVI discharged an assumed obligation  
17 to enter or negotiate the written license agreement referenced in the AJVA

18 6. Whether Plaintiff, after pleading that Defendants, “at best” enjoyed an “at-  
19 will license, which it alleged terminated after it was unable to negotiate a license  
20 agreement on May 31, 2024, is judicially estopped, waived or repudiated any claim of  
21 breach of a license agreement as a ground for claiming trademark infringement?

22 7. Whether any other defense, including acquiescence, ratification, unclean  
23 hands, or laches, bar Plaintiff from claiming that PCJV’s use of the trademarks after May  
24 31, 2024 was without consent?

25 **PCJV Parties’ Good Faith**

26 8. Whether PCJV Parties’ use of the U.S. marks after May 31, 2024 was based  
27 on their good faith belief their superior pre-existing trademark rights?  
28

**Intentional Interference with Contractual Relations Claim Against SPAVI**

9. Whether SPAVI engaged in conduct that prevented performance of known valid contracts with PCJV or made performance of these contracts more expensive or difficult, including the AJVA and agreements with franchisees (franchise agreements and area development agreements)?

10. Whether SPAVI knew of these contracts and either intended to disrupt the performance of these contracts or knew that disruption of performance was certain or substantially certain to occur?

11. Whether Defendants were harmed and whether SPAVI's conduct was a substantial factor in causing Defendants' harm?

12. Whether SPAVI's actions were privileged or protected as justified?

**Inducing Breach of Contract Against SPAVI**

13. Whether Cinco and other counterparties owed contractual obligations to PCJV, including (a) duties under the AJVA to comply with consent/no-assignment provisions, to cooperate in and enter a license (if one did not already exist) with the agreed economic/term structure, and to act in good faith in completing the license documentation and ongoing performance, and (b) duties under their term franchise agreements to buy supplies from, pay remuneration to, and remain franchisees of PCJV?

14. Whether SPAVI knew of these obligations and intentionally induced Cinco and other counterparties to breach their obligations by offering and consummating a transaction structured to evade the AJVA's restrictions; by encouraging repudiation of joint venture governance and the license framework; and by directing communications to counterparties calculated to cause nonperformance or termination?

15. Whether the breaches occurred and were a substantial factor in causing PCJV's damages?

**Intentional Interference with Prospective Economic Advantage**

16. Whether PCJV had existing and probable prospective economic relationships with franchisees, with the probability of future economic benefit to PCJV?

1 17. Whether SPAVI knew of these relationships and their probable benefits?

2 18. Whether SPAVI intentionally engaged in wrongful conduct designed to  
3 disrupt these relationships, including misrepresenting authority and rights to the marks;  
4 suppressing and/or denying the agreed license framework; threatening termination or  
5 litigation to chill continued dealings; and instructing franchisees to cease doing business  
6 with Counterclaimants?

7 19. Whether SPAVI's conduct was independently wrongful beyond the  
8 interference?

9 20. Whether the relationships were disrupted and PCJV was harmed thereby?

10 **Intentional Interference with Prospective Economic Advantage**

11 21. Whether PCJV had existing and probable prospective economic relationships  
12 with franchisees, with the probability of future economic benefit to PCJV?

13 22. Whether SPAVI knew or should have known that, absent due care, its  
14 conduct would disrupt those relationships?

15 23. Whether SPAVI failed to act with reasonable care by, among other things,  
16 making and disseminating inaccurate, incomplete, and misleading statements of right and  
17 authority; withholding material information necessary to not mislead; and disregarding  
18 known contractual governance and consent regimes?

19 24. Whether SPAVI's conduct was independently wrongful beyond the  
20 interference?

21 25. Whether the relationships were disrupted, causing economic harm to PCJV?

22 26. Whether SPAVI's conduct was independently wrongful and/or otherwise not  
23 privileged for the same reasons stated above.

24 **Aiding and Abetting Breach of Fiduciary Duty Against SPAVI**

25 27. Whether Cinco owed fiduciary duties of loyalty, care, and good faith to PCJV  
26 as joint venture partner and/or majority participant under the AJVA and the parties' course  
27 of dealing?

28 28. Whether Cinco breached those duties by secretly negotiating with SPAVI to

1 transfer control and rights in derogation of the AJVA; by repudiating joint venture  
2 governance and consent/no-assignment provisions; by suppressing the agreed license  
3 framework; and by acting in self-interest rather than in furtherance of the PCJV?

4 29. Whether SPAVI knew of Cinco's fiduciary status and facts constituting  
5 breach?

6 30. Whether SPAVI gave substantial assistance and encouragement to Cinco's  
7 breaches by structuring and consummating the asset deal; coordinating termination and  
8 transition messaging; and exploiting the breaches to displace PCJV?

9 31. Whether SPAVI's assistance was a substantial factor in causing PCJV's  
10 damages?

11 **Breach of Fiduciary Duty Claims Against Cinco**

12 32. Whether Cinco owed fiduciary duties of loyalty, care, and good faith to  
13 PCJV as joint venture partner and/or majority participant under the AJVA and the parties'  
14 course of performance?

15 33. Whether Cinco breached those duties by repudiating and denying its joint  
16 venture role; acting contrary to the AJVA's consent/no-assignment and governance  
17 provisions; failing to obtain a novation; refusing to cooperate in and enter a license with  
18 the agreed terms; suppressing and/or denying the license framework and AJVA  
19 restrictions; and conspiring with SPAVI to toll and settle, while SPAVI intended to  
20 "terminate" PCJV's rights and sue in bad faith to displace PCJV?

21 34. Whether as a direct and proximate result, PCJV suffered damages, and is  
22 entitled to equitable relief including disgorgement?

23 **Breach of Contract, Including of the Implied Covenant Good Faith and Fair**  
24 **Dealing, Against Cinco**

25 35. Whether PCJV performed, or was excused from performing, all conditions  
26 to performance by Cinco (directly or as an alter ego) under the AJVA?

27 36. Whether Cinco (directly or as an alter ego) breached the AJVA by violating  
28 the consent/no-assignment and governance provisions; failing and refusing to enter a

1 license embodying the parties' agreed framework; failing to exercise best efforts and good  
2 faith to complete the license documentation; and repudiating the AJVA's structure and  
3 restrictions?

4 37. Whether the implied covenant of good faith and fair dealing further obligated  
5 Cinco not to do anything to unfairly interfere with PCJV's right to receive the benefits of  
6 the AJVA and the agreed license framework?

7 38. Whether Cinco breached the covenant by the same conduct?

8 39. Whether PCJV suffered damages thereby?

9 **Remedies to Defendants**

10 40. The amount of any damages to that should be awarded to Defendants and  
11 against SPAVI and/or Cinco?

12 41. Whether SPAVI and/or Cinco acted with oppression, fraud or malice; if so,  
13 the amount of punitive damages that should be awarded to Defendants?

14 42. Whether PCJV should be declared the owner of the U.S. marks and Counter-  
15 Defendant, all Third Party Defendants and those in active concert or participation should  
16 be permanently enjoined from using the trademark marks and anything confusingly  
17 similar in the United States.

18 **9. All discovery is complete.**

19 **10. Rule 26(a)(3) disclosures.**

20 SPAVI contends that all disclosures under Federal Rule of Civil Procedure 26(a)(3)  
21 have not been made. Defendants dispute that contention.

22 The updated joint exhibit list of the parties has been filed under separate cover as  
23 required by Local Rule 16-6.1. Unless all parties agree that an exhibit shall be withdrawn,  
24 all exhibits will be admitted without objection at trial, except those exhibits listed below:

25 (a) SPAVI objects to the following Exhibit Nos. on the following grounds:  
26  
27  
28

Ex.	Description	Objection <sup>2</sup>
36.	July 31, 2024 Email from K. Hsu Re: RE: SPAVI Dkt. 44-45	F, H
38.	November 12, 2019 Verified Third Amended Cross-Complaint filed by Guy Koren in Cinco Corp. v. Koren et al., Los Angeles Superior Court, Case No. BC701075 Dkt. 44-46	H, P
45.	Declaration of Maria Rosario L. Ybanez (October 10, 2024) Dkt. 44-2	H. Third-Party Witness
46.	Declaration of Jose P. Magsaysay (October 10, 2024) Dkt. 44-3	H. Cinco employee
48.	Declaration of Yiow Leong Tan (October 10, 2024) Dkt. 44-5	H. SPAVI employee
49.	Declaration of Jose Arnold T. Alvero (October 10, 2024) Dkt. 44-6	H. SPAVI employee
50.	Declaration of Jorge Ma. Q. Concepcion (October 10, 2024) Dkt. 44-7	H. SPAVI employee
53.	WhatsApp Messages between Alon Koren and Catherine Joy Antonio Dkt. 37-4	Foundation and hearsay.
54.	July/August 2024 Emails with Catherine Joy Antonio Dkt. 37-5	Foundation and hearsay.
56.	Rada Kong Decl. Dkt. 37-7	H. PCJV franchisee
66.	June 6, 2018 Reporter's Transcript Dkt. 37-17	H, P
1007.	May 2, 2017 Email from Ismael G. Khan to Erlinda Bartolome RE Letter of Appreciation to Guy Koren	H
1018.	May 18, 2010 Email from Erlinda Bartolome to Amit Nemanim, et al. RE The First Board Meeting of PCE Management on May 30, 2010	H
1030.	October 1, 2010 Email from Kim Lambert to Erlinda Bartolome RE Franchisor Entity Not Holding Any Assets to Any Stores	F, H
1038.	DLA Piper's August 16, 2011 Invoice (Invoice No. 2609883)	F, H
1039.	DLA Piper's August 16, 2011 Invoice (Invoice No. 2609884)	F, H

<sup>2</sup> Ledger ("F") foundation, ("R") relevance, ("P") Rule 403, ("H") hearsay not within an exception, ("C") improper compilation of documents, ("O") impermissible opinion, and ("S") settlement communication.



Ex.	Description	Objection <sup>2</sup>
1040.	DLA Piper's August 16, 2011 Invoice (Invoice No. 2609885)	F, H
1041.	DLA Piper's August 16, 2011 Invoice (Invoice No. 2609887)	F, H
1069.	Amir Jacoby's Privilege Log	R, P
1076.	Verified Complaint of Cinco Corporation, filed April 10, 2018	R, P
1077.	First Amended Complaint of Cinco Corporation and Potato Corner International, Inc., filed August 24, 2018	R, P
1078.	Verified Second Amended Complaint of Cinco Corporation and Potato Corner International, Inc., filed December 18, 2018	R, P
1079.	Verified Third Amended Complaint of Cinco Corporation and Potato Corner International, Inc., filed June 28, 2019	R, P
1080.	Verified Cross-Complaint of Cross-Complainant Guy Koren, filed May 8, 2018	R, P
1082.	Cross-Complaint Guy Koren's Verified Second Amended Cross- Complaint, filed July 22, 2019	R, P
1083.	Defendant and Cross-Complainant Guy Koren's Opposition to Brief to Cinco Corporation's <i>Ex Parte</i> Application for Order to Show Cause Re Preliminary Injunction	R, P
1088.	Plaintiff Cinco Corporation and Potato Corner International, Inc.'s Motion to File Under Seal Certain Exhibits In Support of Motion for Summary Adjudication, filed December 19, 2018	R, P
1134.	*9/20/24 Declaration of Guy Koren	C
1135.	6/19/18 Order Denying Cinco's Request for Injunctive Relief and Granting Koren's Request for Injunctive Relief	R, P
1136.	6/4/19 Order Granting Motion to Quash	R, P
1137.	8/30/19 Order Denying Potato Corner International's Motion for Preliminary Injunction	R, P
1138.	5/28/24 Minutes Regarding Trial Readiness Conference	R, P
1139.	5/14/18 Order Granting Ex Parte Application for Temporary Restraining Order in Case No. BC701075	R, P
1141.	6/4/19 Order Granting Plaintiffs' Motion to Quash Subpoenas in Case No. BC701075	R, P



Ex.	Description	Objection <sup>2</sup>
1143.	5/28/24 Order Dismissing Case No. BC701075	R, P
1146.	PCJV's Growth Chart	F, R, P, H
1148.	*11/19/24 Declaration of Barry Kurtz	H, P, O
1149.	*11/19/24 Declaration of Ashley Grudnowski	H, P
1153.	*12/01/2024 Declaration of Rada Kong	H, P
1160.	*1/10/25 Declaration of Adam Mandel	H, O
1161.	*1/10/25 Declaration of Ashley Grudnowski	H
1164.	*1/10/25 Declaration of Barry Kurtz	H, O
1177.	*12/20/24 Declaration of Jason Engel	H, P
1178.	Engel Expert Report of JAE 2/28/25	H, P
1352.	*1/12/21 Declaration of Inbal Jacoby	H, P
1353.	1/13/21 First Amended Cross-Complaint	H, P
1354.	2/25/22 A. Beral Letter to M. Murphy RE Cinco v. Koren	H
1355.	6/10/20 Cinco's and PCI's Verified Answer to TACC	P
1359.	*8/19/22 M. Reeve Decl.	R, P, H
1360.	5/14/18 Order Granting PCJV's Temporary Restraining Order Against Cinco	P
1364.	*12/8/20 A. Jacoby Declaration	H
1365.	*12/16/20 Supplemental A. Jacoby Declaration	H
1371.	*3/1/21 M. Tung Declaration	R, P, H
1372.	*1/1/21 M. Reeve Declaration	R, P, H
1373.	*12/31/20 D. Xie Declaration	R, P, H
1374.	*1/4/21 E. Garcia Declaration	R, P, H
1375.	*1/5/21 G. Koren Declaration in Opposition to A. Jacoby's PI Motion	H, C
1377.	*8/13/20 G. Koren Declaration	R, P
1378.	7/24/19 E. Bartolome Declaration	H, C

Ex.	Description	Objection <sup>2</sup>
1379.	*7/24/19 G. Koren Declaration	C
1380.	*6/23/19 I. Jacoby Declaration	H, C
1381.	*6/23/19 A. Jacoby Declaration	H, C
1382.	*6/14/19 B. Kurtz Declaration	P, H, C, O
1383.	*6/17/19 A. Grudnowski Declaration	P, H, C,
1384.	*6/17/19 A. Koren Declaration	P, H
1385.	6/17/19 T. Hodgson Declaration	P, H
1386.	6/16/19 E. Bartolome Declaration	P, H, C
1387.	*6/17/19 G. Koren Declaration	P, H, C
1388.	*12/3/18 A. Jacoby Declaration	P, H, C
1389.	*11/27/18 G. Koren Declaration	R, P, H, C
1390.	*11/14/18 A. Jacoby Verified Response to Demurrer	R, P, H
1394.	*6/13/18 G. Koren Declaration	H, C
1396.	*5/31/18 M. Li Declaration	R, P, H
1397.	*5/26/18 M. Zhang Declaration	R, P, H
1398.	*5/28/18 F. Shaikh Declaration	R, P, H
1399.	5/29/18 E. Bartolome Declaration	P, H, C
1400.	5/30/18 T. Hodgson Declaration	P, H,
1403.	*5/23/18 M.A. Victor Declaration	F, P, H
1405.	*5/17/18 Supplemental G. Koren Declaration	P, H, C
1406.	*5/9/18 A. Grudnowski Declaration	R, P, H
1407.	*5/9/18 V. Lai Declaration	R, P, H
1408.	*5/10/18 E. Garcia Declaration	R, P, H
1409.	*5/3/18 T. Macaraig Declaration	R, P, H
1410.	*2018.05.10 M.A. Victor Declaration	R, P, H
1411.	*5/10/18 J. Konstantinides Declaration	R, P, H

Ex.	Description	Objection <sup>2</sup>
1412.	*5/10/18 A. Jacoby Declaration	R, P, H
1413.	*5/10/18 G. Koren Declaration	R, P, H
1415.	5/8/18 G. Koren Verified Answer to Cinco Complaint	R, P, H
1417.	6/14/18 A. & I. Jacoby Verified Answer to G. Koren CC	R, P, H
1418.	7/22/19 PCJV Verified Answer to Cinco & PCI TAC	R, P, H
1419.	7/18/19 G. Koren Verified Answer to Cinco & PCI TAC	R, P, H
1421.	11/12/19 G. Koren Verified TACC	R, P, H
1422.	6/9/20 Cinco & PCI Verified Answer to G. Koren TACC	R, P, H
1423.	8/31/20 A. & I. Jacoby Verified Answer to G. Koren's TACC	R, P, H
1424.	8/31/20 A. & I. Jacoby Verified CC	R, P, H
1425.	9/18/20 A. & I. Jacoby Verified Answer to 4th Amended CC	R, P, H
1426.	10/1/20 A. & I. Jacoby Verified Cross-Complaint	R, P, H
1427.	11/15/24 A. Beral email to M. Murphy RE PCJV/SPAVI	S, P, H
1432.	Exh. A 5/4/23 letter	F, S, P, H
1433.	Exh. C Graph of PCJV's Total Open Store Count from 2010-2024	F, P, H
1438.	*11/19/24 A. Mandel Declaration	H, P, C
1442.	Exh. B 2022-2023 Net Royalties for Multiple PCJV Locations	F, P, H
1445.	Exh. 1 Jason A. Engel Professional Qualifications	F, H
1446.	Exh. 2 List of Cases Involving Expert Testimony By Jason Engel	F, P, H
1447.	Exh. 3 Shakey's pizza Asia Ventures, Inc. v. PCJV USA, LLC et al Documents Reviewed and Considered as of 2/25/25	F, P, H
1545.	11/18/24 - Estimate Cost of Removal of Existing Signage - Potato Corner; Comfort Messers DBA MDR Builders LLC	F, H

(b) In accordance with the Updated Challenged Exhibits Table, the PCJV Parties

object to the following Exhibits on the following grounds:

<u>Ex.</u>	<u>Description</u>	<u>Objections</u>
32	April 15, 2024 Statement of Managements Responsibility for Consolidated Financial Statements Dkt. 44-41	Δ: This proffered exhibit appears to be a third-party independent audit report for Plaintiff's international operations. This is not relevant and is hearsay. FRE 401-402, 801. To the extent proffered to serve a basis for an opinion (e.g., the value of trademarks associated with the United States business), Plaintiff has not designated an expert witness to render opinions. FRE 701. Contrary to Plaintiff's position, a lay witness cannot opine as to valuation models. <i>See FiTeq INC v. Venture Corp.</i> , Case No. 13-cv-01946-BLF, 2016 WL 683256, *7 (N.D. Cal.) (excluding valuation testimony by lay witnesses who are not valuation experts).
104	June 10, 2019 email re answers to questions	Δ: This appears to be an inadvertently produced document by certain counsel in the state court action. The face of the document clearly shows that it comprises answers from Alon Koren to interrogatories. Alon Koren, who also was a party sued by Cinco in the state court action, was also in a common interest with Guy Koren and other parties. Therefore, the communication also constitutes a common interest communication. Beyond that, PCJV USA Parties cannot ascertain the relevance of this document. FRE 401-402. It also should be barred by FRE 403 for being prejudicial and necessitating undue consumption of time.
107	Online customer reviews	This document is a compilation of inadmissible hearsay consisting of selective online Yelp complaints that are made out of court and offered for the truth of the matter asserted. FRE 801; <i>see, e.g.</i> , Exh. No. 107 at 1-2, 3, 7, 9. Further, many of the reviews are irrelevant, unduly prejudicial, and would

<u>Ex.</u>	<u>Description</u>	<u>Objections</u>
		necessitate unnecessary consumption of time to rebut. FRE 401, 402, 403. Online reviews of businesses must be authenticated to show (1) they were actually made by the reviewing customers and (2) an accurate representation of online reviews. <i>See Wady v. Provident Life &amp; Accident Ins. Co. of Am.</i> , 216 F. Supp. 2d 1060, 1064-165 (C.D. Cal. 2002). None of the purported reviewers are listed as witnesses expected to testify at trial and, thus, cannot authenticate the reviews (unless Plaintiff is willing to admit that its own agents submitted these reviews).
108-152	Newly Proffered Exhibits	Δ: Violates Dkt. 336.

# **11. Witness lists of the parties have been filed with the Court.**

Only the witnesses identified in the Updated Joint Witness List will be permitted to testify (other than solely for impeachment), though, as noted in the Updated Joint Witness List, SPAVI has objected to a number of the PCJV Parties' witnesses on the grounds that such witnesses were not identified and disclosed as a potential witness in the PCJV Parties' Rule 26 Disclosure (Dkt. 173-6). To the extent the PCJV Parties attempt to argue that these witness were included as part of a disclosed category of witnesses (*i.e.*, a Rule 30(b)(6) witness of a party entity), these specific witnesses were never specifically disclosed by name as required under Rule 26(a)(1)(A)(i) even though the PCJV Parties knew these witnesses would be the Rule 30(b)(6) witness for the respective party entity and is thus a violation of Rule 26(a)(1)(A)(i). Given this violation, SPAVI contends exclusion of these witnesses is proper under Federal Rule of Civil Procedure 37(c)(1).

Each party intending to present evidence by way of deposition testimony has marked such depositions in accordance with Local Rule 16-2.7.

1       **12. The following law and motion matters and motions *in limine*, and no**  
2 **others, are pending or contemplated:**

3       SPAVI is contemplating a second motion for contempt in the absence of a prompt  
4 trial date because some of the PCJV Parties continue to use the Potato Corner trademarks  
5 despite this Court’s preliminary injunction.

6       The parties have filed motions *in limine*. All parties may make appropriate motions  
7 at trial.

8       **13. Bifurcation of the following issues for trial is ordered:**

9       SPAVI contends that if the jury returns a finding of fraud, malice, or oppression on  
10 SPAVI’s common law trademark infringement cause of action, the amount of punitive  
11 damages should be bifurcated. Additionally, all equitable claims should be bifurcated,  
12 including any claim for a finding on enhancement and an award of attorney’s fees under  
13 the Lanham Act, as well as Defendants claims for declaratory relief and for unfair  
14 competition as well as several of its affirmative defenses.

15       Defendants do not believe that punitive damage issues should be bifurcated and  
16 further contend that the SPAVI Parties waived any right to seek bifurcation of punitive  
17 damages. *See, e.g.*, Dkt. 199 at 18 (“Bifurcation of *punitive* damages is *inappropriate* here  
18 ... This case can, and should, be trial all at once.”) (original emphasis).

19       Finally, Defendants previously had requested a bifurcated trial limited to liability  
20 only (first isolating threshold findings on infringement elements of ownership/assignment  
21 and without consent). *See* Dkt. 333 at 11. The Court stated at Dkt. 336 that the parties  
22 “should proceed on the assumption that trial will not be bifurcated” with stated reasons  
23 while leaving open the potential for a joint request if the parties could agree and  
24 demonstrate to the Court’s satisfaction that it would be more efficient. *Id.* at 2.

25       **14. The foregoing admissions having been made by the parties, and the parties**  
26 **having specified the foregoing issues remaining to be litigated, this Final Pretrial**  
27 **Conference Order shall supersede the pleadings and govern the course of the trial of this**  
28 **cause, unless modified to prevent manifest injustice.**

1 DATED: \_\_\_\_\_  
2  
3

4 \_\_\_\_\_  
5 Stanley Blumenfeld, Jr.  
6 United States District Judge  
7

8 Approved as to form and content.  
9

10 Dated: December 29, 2025

11 /s/ John J. Shaeffer  
12 John J. Shaeffer  
13 Matthew Follett  
14 Meeghan H. Tirtasaputra  
15 *Attorneys for Plaintiff and*  
16 *Counterclaim Defendant, and Third*  
17 *Party Defendants*  
18

19 Dated: December 29, 2025

20 /s/ Arash Beral  
21 Arash Beral  
22 Todd M. Malynn  
23 Jamison T. Gilmore  
24 *Attorneys for Defendants,*  
25 *Counterclaimants, and Third Party*  
26 *Plaintiffs*  
27  
28



**ATTESTATION**

Pursuant to Local Rule 5-4.3.4, the filer attests that all signatories listed, and on whose behalf the filing is submitted, concurs in the filing's consent and have authorized the filing.

Dated: December 29, 2025

**FOX ROTHSCHILD LLP**

/s/ John J. Shaeffer

John J. Shaeffer

*Attorneys for Plaintiff and Counterclaim  
Defendant, and Third Party Defendants*

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on December 29, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: December 29, 2025

**FOX ROTHSCHILD LLP**

*/s/ John J. Shaeffer*  
John J. Shaeffer  
*Attorneys for Plaintiff and Counterclaim  
Defendant, and Third Party Defendants*